

COMMONWEALTH OF VIRGINIA
VOLUME DISCOUNT SALES AGREEMENT

Agreement No. VDSA 194-001-06-MCLN

This agreement entered into October 18, 2005 by **Michelin North America** (hereinafter "Contractor"), and the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, called the "Purchasing Agency".

Witnesseth that the Contractor and the Purchasing Agency, in consideration of mutual covenants, promises and agreements herein contained, agree as follows:

Scope of Agreement: The Contractor shall provide tires to the Agencies of the Commonwealth of Virginia, or other public bodies as set forth in the contract documents.

PERIOD OF PERFORMANCE: From: September 1, 2006
Through: August 31, 2007

The agreement documents shall consist of:

- (1) This signed form;
- (2) The attached terms and conditions; and
- (3) Attached Michelin North America, Price Lists Effective February 1, 2006

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound.

CONTRACTOR: By: _____ Print Name: _____ Title: _____ Company Name: _____ Date: _____	PURCHASING AGENCY: By: _____ Print Name: _____ Title: _____ COVA Division: _____ Date: _____
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I. VOLUME DISCOUNT SALES AGREEMENT

Program Outline: The Volume Discount Sales Agreement, hereinafter referred to as "VDSA", is established on non-competitive voluntary basis with Michelin North America. The purpose of the VDSA is to ensure that all agencies and public bodies of the Commonwealth are afforded the opportunity to avail themselves of a uniform Vendor discount when purchasing small dollar goods (less than \$5,000 per transaction) from Michelin North America this is a non-mandatory program and purchasing activities are under no obligation to purchase from this agreement.

II. GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL** : This contract is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842 or through the DPS website <http://dps.dgs.virginia.gov/dps/>.
- B. **APPLICABLE LAWS AND COURTS**: This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION**: The contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 11-51 of the *Virginia Public Procurement Act*.

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** The contractor certifies that their pricing is without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with their offer, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The contractor certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** The contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **PRECEDENCE OF TERMS:** The General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- H. **ASSIGNMENT OF CONTRACT:** ASSIGNMENT OF CONTRACT: This contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth. Notwithstanding the foregoing, nothing herein shall prohibit the delivery of products or services pursuant to this Agreement by Contractor's authorized independent dealers.
- I. **CHANGES TO THE CONTRACT:** Changes can be made to this contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the

work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

- c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- J. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- K. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

III **SPECIAL TERMS AND CONDITIONS**

- A. Authorized Users: Unless otherwise instructed by the Division of Purchases and Supply, all departments, institutions, agencies and other public bodies of the Commonwealth of Virginia, to include cities, counties, towns and political subdivisions, may order tires under this agreement.

- B. Excise Tax: Excise tax exemption registration No. 54-73-0076K may be used when required.
- C. Inspection/Approval: Inspection on delivery and approval of Contractor's invoice is the responsibility of receiving state agency or public body.
- D. Orders. This agreement is only valid for "over the counter" sales of tires and services as offered by the contractor. Orders will only be placed with participating dealers identified by the Contractor. All payments will be made directly to the selling dealer via the buyer's purchase card. Localities only may make payment via their purchase card or any other means which is mutually agreeable between the locality and selling dealer.
- Minimum Orders: There is no minimum order under this agreement. All tires ordered under the agreement shall be priced as FOB destination.
- F. Delivery. Delivery is to be made from the dealer's inventory. If a tire is not in stock at the dealer the purchasing agency at their discretion request that the selling dealer order the tire(s) for pickup at a mutually agreeable future date.
- G. Prices. All prices provided by the Contractor shall be FOB selling dealer.
- H. Posting of Prices and Dealer Information: The Contractor gives permission for the Division of Purchases and Supply to post this agreement, pricing data, dealership information and any other information necessary to facilitate the use of this agreement by the authorized users of this agreement on the Division's web site.
- I. Price Escalation/De-escalation . Due to uncertain market conditions the Commonwealth and the Contractor may negotiate mutually agreeable price changes to this agreement.
- J. Cancellation: This agreement may be cancelled by either party with thirty (30) days written notice to the other party.
- K. Volume Reports: The Contractor shall provide quarterly sales volume reports. The report will contain the following data. Product Number, Tire Description, Number of Tires Sold by Product Number, Total Cost of Tires Sold by Product Number, and whether the tires were sold to the Commonwealth or one of its Political Subdivisions.
- L. Volume Bonus: The Contractor agrees to remit a volume bonus in the amount of .75% of the total sales under this agreement for the previous six months. The check is to be mailed as follows:

Checks are to be payable to: **Treasurer of Virginia**

Checks are mailed to:
Department of General Services
P.O. Box 267
Richmond, VA 23218-0267

Along with the check, the Contractor will submit a report for the period for which the bonus is being paid depicting the same information as required in paragraph K above, Volume Reports. The first payment is due May 15, 2006 and shall include the sales from the start date of this agreement through April 30, 2006. The second payment will be due September 15, 2006 and shall include the sales from May 1, 2006 through August 31, 2006.

NOTHING FOLLOWS